

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

172

FILE:

Office:

PHILADELPHIA

Date: FEB 18 2010

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The District Director's decision will be withdrawn, the applicant's waiver application declared moot, and the matter returned to the District Director for further processing consistent with this decision.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and U.S. citizen children.

The Acting District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on his qualifying relatives, his U.S. citizen wife and children, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(2)(A) of the Act because he has not been convicted of any crimes and did not admit to criminal misconduct.

In support of the application, the record contains, but is not limited to, a brief from counsel, court dispositions, an affidavit from the applicant's spouse, and a psychological examination. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that on March 11, 2001, the applicant was arrested by the Norristown Police Department and charged with two counts of simple assault in violation of title 18, section 2701 of the Pennsylvania Statutes (18 Pa. Consol. Stat. § 2701) and two counts of harassment in violation of 18 Pa. Consol. Stat. § 2709. On June 19, 2001, the charges against the applicant were withdrawn and *nolle prossed* [REDACTED]

The record further reflects that on April 27, 2003, the applicant was arrested by the Norristown Police Department and charged with two counts of simple assault in violation of 18 Pa. Consol. Stat. § 2701, one count of terroristic threats in violation of 18 Pa. Consol. Stat. § 2706, two counts of harassment in violation of 18 Pa. Consol. Stat. § 2709, and four counts of disorderly conduct in violation of 18 Pa. Consol. Stat. § 5503. On May 14, 2003, the charges against the applicant were withdrawn and *nolle prossed* ([REDACTED])

In denying the applicant's Form I-485 (Application to Register Permanent Resident or Adjust Status), the director provided the following account of the applicant's inadmissibility:

Service records reflect that you were arrested on March 11, 2001 and again on May 2, 2003 for charges related to domestic assault, which constitute crimes involving moral turpitude. Although these charges were all formally withdrawn by your wife, your wife admitted in her sworn affidavit that you were abusive towards her in the past. Based upon all the information contained in the record, the Service has sufficient information to conclude that you committed crimes involving moral turpitude. As you committed crimes involving moral turpitude, you are inadmissible to the United States pursuant to section 212(a)(2)(A)(I) of the Act.

On appeal, counsel asserts that in non-conviction cases, the operative language is that the alien "admits" either the commission of the crime, or the essential elements of the crime. Counsel states that there is no provision in the Immigration and Nationality Act to exclude an alien whose wife "admits" that he committed crimes. Counsel further asserts that under the "informed admission" rule, the Service must establish that it obtained the admission fairly and with notice to the alien. Counsel states that the admitted conduct must meet the essential elements of a crime in the jurisdiction where it occurred. Counsel states that the applicant for admission must have been provided with the definition and essential elements of the crime prior to his admission. Counsel states that the alien's admission must be voluntary. Finally, counsel asserts that since Pennsylvania has no "domestic abuse" statute, his offense of simple assault, harassment, and disorderly conduct are not *per se* crimes involving moral turpitude.

The AAO has reviewed the record and agrees with counsel's assertion that the record does not reflect that the applicant admitted to having committed crimes involving moral turpitude. A plain reading of the statute shows that for an alien to be deemed inadmissible under section 212(a)(2)(A) of the Act, he must be: 1) convicted a crime involving moral turpitude; or 2) admitted having committed a crime involving moral turpitude; or (3) admitted committing acts which constitute the essential elements of a crime involving moral turpitude. In order for an admission to be properly used as a basis for inadmissibility, three conditions must be met, including: 1) the admitted acts must constitute the essential elements of a crime in the jurisdiction in which they occurred; 2) the alien must have been provided with the definition and essential elements of the crime prior to making the

admission, and; 3) the admission must have been voluntary. *Matter of K-*, 7 I&N Dec. 594, 596-98 (BIA 1957).

In the present case, none of the criminal charges against the applicant have resulted in convictions. Furthermore, the record does not contain an admission from the applicant. A plain reading of the statute does not permit an admission from another individual, such as an alien's spouse, to render an alien inadmissible under section 212(a)(2)(A) of the Act. Therefore, the AAO finds that the evidence in the record is insufficient to support a finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The AAO notes that since the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, no purpose would be served in addressing counsel's assertion that the offenses of simple assault, harassment and disorderly conduct under the Pennsylvania Statutes are not categorically crimes involving moral turpitude.

ORDER: The decision of the Acting District Director is withdrawn and the applicant's waiver application is dismissed as moot as the applicant is not inadmissible based on the record. The matter is returned to the District Director to reopen the applicant's adjustment of status application (Form I-485) for further processing.